



RULES AGENDA: 08-31-05

ITEM: *C1a*

Memorandum

TO: RULES COMMITTEE

FROM: Leslye Corsiglia
Robert L. Davis
Betsy Shotwell

SUBJECT: SEE BELOW

DATE: August 30, 2005

Approved

Date

8/31/05

COUNCIL DISTRICT: Citywide
SNI: All

SUBJECT: AB 438 (PARRA) AND AB 1323(VARGAS) RELATING TO REGISTERED SEX OFFENDERS

RECOMMENDATION

That the Rules Committee recommend to the City Council:

1. A watch position on AB 438 (Parra), which would amend State law concerning registered sex offenders.
2. Support for AB 1323 (Vargas), which addresses several outstanding issues since the Department of Justice placed California's Megan's Law on the Internet.

AB 438 (Parra) relating to Registered Sex Offenders

BACKGROUND

The information that follows is in response to a request by Councilmember Chuck Reed through the Rules Committee for staff to provide an analysis and recommendation on AB 438 to the City Council. Under existing State law, the public may obtain information on persons registered as sex offenders through an Internet website (commonly known as the Megan's Law database). However, the law makes it illegal, except as explicitly specified, to use any of the disclosed information for purposes related to insurance, loans, credit, employment, scholarships, housing or accommodations, and benefits, privileges, or services provided by any business establishment. Furthermore, California law prohibits the disclosure of information from the website except when necessary to protect a person at risk.

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AB 438 seeks to amend the State law to allow a lessor of residential real property to refuse to provide housing to, or to evict, registered sex offenders whose residence must be made public on the Megan's Law website.

ANALYSIS

The intent of AB 438 is to clarify that rental housing providers can use the Megan's Law database to act in the interest and safety of their tenants. According to the bill's sponsor, the California Apartment Association (CAA), current law provides rental property owners and managers with a conflicting directive: If a rental property owner or manager learns from the database that one of their tenants is a registered sex offender, they cannot deny the sex offender housing nor warn other tenants based on this knowledge without the risk of being sued by the sex offender. At the same time, if a rental property owner knows a sex offender is renting their property, they are at risk of being sued if they fail to protect residents against this known risk.

However, according to the Assembly Public Safety's analysis, the assumption that rental property owners can insulate their tenants from the threat of sex offenders through the notification allowed in AB 438 is questionable considering that California's 70,000 registered sex offenders live in most areas of the State. In addition to registered sex offenders, AB 438 could potentially impact a large number of innocent persons such as the sex offender's spouse, domestic partner, and minor children.

- By evicting or refusing to rent to a registered sex offender, the property owner could effectively cause an entire family to become homeless.
- Due to the bill's broad language, these families could also be subject to the loss of benefits, services, and other unspecified forms of discrimination.
- Sex registrants would be more likely to move into temporary housing. In San Jose this would include places such as the Salvation Army, City Team Ministries, Julian Street Inn and other downtown motels.
- If AB 438 became law, the refusal of housing could increase the number of sex registrants who register as transient and are virtually untraceable under the current 30-day registration requirement.
- AB 438 would mandate local law enforcement agencies to update the registered sex offenders in their jurisdiction "within a reasonable time after receiving notice from the current owner of the real property" when the registered sex offender no longer resides at the address listed on the Megan's Law website.
- The San Jose Police Department currently conducts at least one physical compliance check or birthday audit of every registered sex offender in the City. It is unknown what financial impact this bill will have on the City of San Jose.

In addition to the concerns described above, the Legislative Counsel issued a legal opinion, that if AB 438 became law, it could be ruled as in violation of the Unruh Civil Rights Act due to provisions that specifically discriminate against sex offenders. Although sex offenders are not a protected class under the Unruh Act, the Legislative Counsel predicts that a Court could create a

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new classification of protection under the Act, or determine that some sex offenders are protected by the provisions prohibiting discrimination on the basis of a medical condition or disability.

Supporters of AB 438 include: the California Apartment Association (sponsor) and its local affiliate Tri-County Apartment Association, the California State Sheriff's Association, Equity Residential, Essex Property Trust, Inc., the Peace Officers Research Association of California, and the City of Gilroy.

Opponents of AB 438 include: the California Public Defenders Association, the California Coalition on Sexual Offending, the American Civil Liberties Union, the Relationship Training Institute, and A Helping Hand Counseling.

STATUS: AB 438 failed passage in the Assembly Public Safety Committee on April 19, 2005 on a 3-3 vote (four votes required for passage). Reconsideration was granted. On April 26, 2005, the Public Safety Committee postponed the second hearing, making the measure a two-year bill.

RECOMMENDATION: It is recommended that the Rules Committee recommend a watch position. If passed, AB 438 would clarify that rental housing providers could use the Megan's Law website to act in the interest of their tenants against known sex offenders. However, passage of the bill could also create several conflicts with existing civil rights' laws. Due to the uncertainty of additional protections the passage of AB 438 would grant and the potential harm the bill could impose on innocent family members, staff recommends that the Rules Committee recommend a watch position.

AB 1323 (Vargas) relating to Registered Sex Offenders

In addition to the Rules Committee referring AB 438 to staff for review on August 17, 2005, the Rules Committee also referred AB 1323 to staff for review and a recommend action.

BACKGROUND

Current California law requires the Department of Justice (DOJ) to provide either a CD-ROM or other electronic medium containing certain specific information regarding sex offenders to local law enforcement. If approved, AB 1323, would eliminate the Megan's Law "CD-ROM" requirements previously operated through local law enforcement which has been eclipsed by the DOJ Megan's Law Internet website. The "900" telephone number public inquiry system will also be replaced with a new inquiry service operated by DOJ. This bill would also replace required noticing provisions regarding registered sex offenders in lease and rental agreements, and contracts for sale of residential real property, with a notice informing interested persons of the Megan's Law Internet Website. Similar advisories would also replace the current disclosures required by operators of community care facilities that accept registered sex offenders as clients.

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AB 1323 would also tighten the requirements regarding "transient" status and registered sex offenders on college campuses.

ANALYSIS

AB 1323 would require persons operating a community care facility to disclose to law enforcement if a registered sex offender is in their facility upon request. The public is also afforded this right if certain specified conditions are met. This bill would also eliminate the registered sex offender categories (High Risk, Serious & Other) and change to an Internet status of "Full Address" or "Conditional", referring to zip code and county. It would also require "Transients" to be listed by the county of registration. In addition, this bill would eliminate the current "CD-ROM" Megan's law requirements, and create a new DOJ inquiry system which would allow for members of the public to make at least six (6) inquiries at a time as to whether a particular named individual is among those registered sex offenders about whom information is made available.

AB 1323 also provides that law enforcement may provide information to the public about a registered sex offender by whatever means it deems appropriate when it is necessary to ensure public safety. The bill does address several critical areas in Megan's Law. AB 1323 would:

- Eliminate specified registered sex offenders to be exempted from inclusion on the Internet site and authorize local law enforcement to post specified information on their own websites;
- Broaden and clarify the authority of law enforcement to release information to the public about registered sex offenders;
- Introduce a new inquiry service operated by DOJ and eliminate the "CD ROM" Megan's Law requirements;
- Replace the current public notice requirement in rental agreements and sales of real property regarding the residency of registered sex offenders, with a notification on the Megan's Law Internet Website;
- Eliminate registered sex offender classifications.

Although the State's costs associated with AB 1323 are undetermined, the bill is estimated to have no significant fiscal impact on the City of San Jose.

Supporters of AB 1323 include: the Office of the Attorney General, (sponsor), the California State Sheriffs Association, the California Probation, Parole and Correctional Association, and the California District Attorney's Association.

Opponents of AB1323 include California Attorneys for Criminal Justice, the American Civil Liberties Union, and the California Public Defenders Association.

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STATUS: AB 1323 is an urgency measure requiring two-thirds vote for passage. AB 1323 passed the Assembly; and is now pending on the floor of the Senate, as amended on the Senate floor on August 25.

RECOMMENDATION: It is recommended that the Rules Committee recommend a City position of support for AB 1323. AB 1323 addresses several issues that were deferred since the Department of Justice placed California's Megan's Law on the Internet.

PUBLIC OUTREACH

The San Jose Police Department continues to work with the Department of Justice and the community regarding the Megan's Law Internet website. This information allows parents to make informed decisions about the potential threat to their children based on the proximity to the residence of the registered sex offender. AB 1323 also addresses some issues that the SJPD 290 team has encountered during compliance checks and public notifications regarding registered sex offenders.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City's Legislative Representative in Sacramento.



LESLYE CORSIGLIA

Director of Housing



ROBERT L. DAVIS
Chief of Police



BETSY SHOTTWELL
Director, Intergovernmental Relations